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In the Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Interstate Commerce Commission's revised policy for licensing rail-affiliated motor carriers is permissible in light of recent statutory amendments and changed conditions in the regulated industries.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 29a-50a) is reported at 722 F.2d 1243. The decision of the Interstate Commerce Commission (Pet. App. 1a-28a) is reported at 132 M.C.C. 978.

The opinion of the court of appeals also dismissed a petition for review of the Commission's decision (Pet. App. 51a-58a) in I.C.C. Docket No. MC-78786 (Sub-No. 281)F, which is unreported. The opinion of the court of appeals (Pet. App. 59a-70a) staying judicial proceedings pending further action by the Commission is reported at 682 F.2d 487. See page 7 note 3, *infra*.

JURISDICTION

The judgment of the court of appeals was entered on January 20, 1984. A petition for rehearing was denied on

February 22, 1984. The petition for a writ of certiorari was filed on June 22, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners challenge the validity of the Interstate Commerce Commission's revised policy for licensing rail-affiliated motor carriers, which, in light of recent statutory amendments and changed conditions in the industry, no longer requires a showing of "special circumstances" in order for the carrier to obtain unrestricted motor carrier operating authority.

1. The Motor Carrier Act of 1935, ch. 498, 49 Stat. 543 *et seq.* (now codified, as amended, at 49 U.S.C. 10101 *et seq.*)[1], granted the Interstate Commerce Commission plenary regulatory control over a nascent trucking industry beset by the economic problems of the Great Depression. See *American Trucking Associations* v. *United States,* 344 U.S. 298, 312-313 (1953). To promote the stability of the industry, Congress enacted a regulatory system that was designed to protect truckers from competitive forces. See *United States* v. *Drum,* 368 U.S. 370 (1962). In particular, the 1935 Motor Carrier Act, inter alia, required that a motor carrier obtain a license to operate in interstate commerce (49 U.S.C. 10922 and 10923) and prohibited railroads from acquiring or merging with a motor carrier "unless * * * the transaction * * * will be consistent with the public interest and will enable such [acquiring carrier] * * * to use service by motor vehicle to public advantage in its operations and will not

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[1]Subtitle IV of the Interstate Commerce Act (49 U.S.C. 10101 *et seq.*), which was amended by the Motor Carrier Act of 1935, has been frequently amended over the last 50 years. Thus, prior Commission and court decisions interpreting the Act refer to earlier versions and section numbers of the statute. References in this brief will be to the current codification of the Interstate Commerce Act, with appropriate notations to the former language and sections of the statute.

unduly restrain competition" (49 U.S.C. (1976 ed.) 5(2)(b) (now codified at 49 U.S.C. 11344(c)). The statute directed the Commission to administer the Act "impartially * * * to recognize and preserve the inherent advantage of each mode of transportation" subject to its jurisdiction (49 U.S.C. 10101(a)(1)(A)).

The Commission first addressed the interaction of these provisions in *Kansas City S. Transport, Inc., Com. Car. Application,* 10 M.C.C. 221 (1938). A rail-affiliated motor carrier had sought a license to operate as common carrier by motor vehicle in interstate commerce. The Commission determined that approval of the license application was required by the public convenience and necessity, in accordance with the former language of the licensing section of the statute. 10 M.C.C. at 238, 240. The licensing section of the 1935 Motor Carrier Act did not explicitly provide that railroads or rail affiliates operating as motor carriers were to be restricted to operations auxiliary to the parent railroad; in contrast, the Commission had interpreted the acquisitions section, 49 U.S.C. 11344(c), to entail such restrictions. *Pennsylvania Truck Lines, Inc. — Control — Barker Motor Freight, Inc.,* 1 M.C.C. 101 (1936). Nevertheless the Commission, relying upon the policies of Sections 11344(c) and 10101(a)(1)(A), construed the Act to mean that railroads and rail affiliates could not generally obtain authority to operate as unrestricted trucking companies and instead were limited to operations auxiliary or supplemental to those of the parent railroad. 10 M.C.C. at 237-241.

This Court approved the Commission's interpretation in *ICC* v. *Parker,* 326 U.S. 60 (1945), rejecting the railroads' objections in light of the agency's broad authority to further the national transportation system and balance the competing public interests under the statute. See 326 U.S. at 65-66, 68, 70, 72-73.

Later, the Commission developed a so-called "special circumstances" exception to the general *Kansas City Southern* policy for licensing rail-affiliated motor carriers.[2] In *Rock Island Motor Transit Co., Com. Car. Application,* 63 M.C.C. 91 (1954), the Commission held that unrestricted authority could be granted to a rail-affiliated trucking company if it could prove (1) that a grant of such authority would not restrain competition, and (2) that the public interest required the proposed service, which already existing carriers had not offered except when it suited their convenience. 63 M.C.C. at 102.

On appeal, this Court approved the Commission's use of the "special circumstances" exception. *American Trucking Associations* v. *United States,* 355 U.S. 141 (1957) (*ATA I*). The Court observed (355 U.S. at 149-150) that neither the language nor the legislative history of the 1935 Motor Carrier Act indicated that the restriction in the acquisitions section, which required that the railroad be able to "use service by motor vehicle to public advantage *in its operations*" (49 U.S.C. (1976 ed.) 5(2)(b) (emphasis added)), was to be considered in a licensing proceeding. The Court also noted that the Commission "ha[d] accepted the policy" of the acquisitions section as a "guiding light" in the licensing area (355 U.S. at 149) and had previously granted unrestricted operating authority to rail-affiliated motor carriers where special circumstances existed (355 U.S. at 149-150 & n.10). Concluding that the Commission's licensing practices

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[2]The Commission had already developed, and this Court had affirmed, the "special circumstances" exception in the interpretation of the acquisitions section, 49 U.S.C. 11344(c). See *Rock Island Motor Transit Co. — Purchase — White Line Motor Freight Co.,* 40 M.C.C. 457 (1946), *supplemented,* 55 M.C.C. 567 (1949), aff'd *sub nom. United States* v. *Rock Island Motor Transit Co.,* 340 U.S. 419 (1951). In its decision, the Court favorably discussed the Commission's practice in licensing proceedings of limiting the operating authority of rail-affiliated motor carriers. See 340 U.S. at 428, 430-434.

had properly "take[n] cognizance" of the Interstate Commerce Act "as a whole" (355 U.S. at 151-152), the Court affirmed the Commission's recognition of the special circumstances exception.

Three years later, the Court reversed the Commission's unexplained and isolated departure from the special circumstances doctrine in a licensing proceeding. See *American Trucking Associations* v. *United States,* 364 U.S. 1 (1960) (*ATA II*). Confirming the Commission's prior interpretation of Sections 10101(a)(1)(A), 10911, and 11344(c) (364 U.S. at 6-7), the Court set aside the Commission's grant of unrestricted authority to a rail-affiliated motor carrier where no finding of special circumstances had been made.

In sum, prior to 1980, the Commission routinely restricted rail-affiliated motor carriers' operating licenses to operations auxiliary or supplemental to the parent railroad's operation, unless there existed special circumstances warranting unrestricted authority. The most significant elements of "special circumstances" were that (1) no undue restraint of competition would result, and (2) the public interest required service that was not being furnished by independent motor carriers. As noted in the agency's decision on review here (Pet. App. 12a n.4 (citing cases)), the Commission applied the special circumstances doctrine flexibly, taking account of a number of considerations in determining whether to grant an unrestricted operating license to a rail-affiliated motor carrier.

2. In July 1980, Congress enacted the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 *et seq.* The new Act ended the protective policy of the 1935 Act toward regulated carriers. See 49 U.S.C. (Supp. V 1976) 10101(a)(7); H.R. Rep. 96-1069, 96th Cong., 2d Sess. 3, 4 (1980); *Kenosha Auto Transport Corp.* v. *United States,* 684 F.2d 1020, 1026-1028 (D.C. Cir. 1982). For example, the 1980 Act

eased restrictions on entry into the trucking industry by eliminating altogether certain of the substantive requirements for an operating license, by liberalizing the remaining requirements, and by shifting the burden of proof to those opposing an application for operating authority. See 49 U.S.C. 10922(b)(1) and (b)(2)(B). The purpose of this amended licensing section was to offer "increased opportunities for new carriers to get into the trucking business and for existing carriers to expand their service." H.R. Rep. 96-1069, *supra,* at 3.

Consistent with this policy, the 1980 Act also evinced a new congressional emphasis on intermodal operations. The Act expressly declared that national transporation policy is to "promote intermodal transportation." 49 U.S.C. (Supp. V 1976) 10101(a)(7)(H). This new intermodal focus "sets the tone for the regulatory structure" of the 1980 Act. H.R. Rep. 96-1069, *supra,* at 11.

Shortly after the passage of the 1980 Motor Carrier Act, Congress enacted the Staggers Rail Act of 1980; Pub. L. No. 96-448, 94 Stat. 1895 *et seq.* Congress intended the Staggers Act to replace regulation with competition as the primary force governing rail rates and services. H.R. Conf. Rep. 96-1430, 96th Cong., 2d Sess. 79-80 (1980); *Western Coal Traffic League* v. *United States,* 719 F.2d 772, 777-778 & n.10 (5th Cir. 1983) (en banc), cert. denied, No. 83-1341 (Apr. 23, 1984). To this end, Congress created a new national Rail Transportation Policy, 49 U.S.C. 10101a. This new rail policy stressed the congressional desire to minimize federal regulatory control. 49 U.S.C. 10101a(2). In addition, like the 1980 Motor Carrier Act, the Staggers Act was designed "to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes" (49 U.S.C. 10101a(5)), and emphasized the importance of intermodal transportation (49 U.S.C. 10505(f)).

3. Soon after enactment of the 1980 legislation, the Commission received licensing applications from rail-affiliated motor carriers. In ICC Docket No. MC-78786 (Sub-No. 281)F, *Pacific Motor Trucking Co. Extension-Nationwide General Commodities* (Pet. App. 51a-58a), the Commission granted such an application but observed (*id.* at 52a n.1) that a reexamination of the special circumstances doctrine was warranted in light of the 1980 Acts.[3]

In Ex Parte No. MC-156, *Applications For Motor Carrier Operating Authority By Railroads And Rail Affiliates,* the Commission proposed to examine the continued viability of the restriction on operating authority for rail-affiliated motor carriers in light of the policies in the 1980 legislation against protecting regulated carriers from competition and in favor of intermodal operations. A variety of interested parties filed comments. Rail carriers, rail-affiliated motor carriers, and the United States Department of Transportation supported elimination of the restriction. The American Trucking Associations, Inc. (ATA), and various shippers, freight forwarders, and independent motor carriers opposed any change in the policy.

In January 1983, the Commission issued a statement establishing a revised policy for licensing rail-affiliated motor carriers (Pet. App. 1a-28a). Under the new policy, the Commission will no longer require that special circumstances be demonstrated before a rail-affiliated motor carrier may obtain unrestricted operating authority. The

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[3]On judicial review of ICC Docket No. MC-78786 (Sub-No. 281)F, the court of appeals initially stayed its proceedings (Pet. App. 59a-70a) pending issuance of the final policy statement by the commission in Ex Parte No. MC-156 concerning the continued applicability of the "special circumstances" doctrine. The court of appeals ultimately affirmed the grant of unrestricted authority in the individual licensing proceeding in light of the Commission's revised policy (Pet. App. 30a-31a, 48a).

Commission reached this conclusion in light of the new policies of the 1980 Motor Carrier Act and the Staggers Act (Pet. App. 3a-8a) and in light of changed conditions in the industries (*id.* at 8a-10a). It observed that "the extraordinary barriers maintained by a 'special circumstances'-type doctrine are inapposite to the procompetitive policies of the new licensing provisions of the revised Interstate Commerce Act" (*id.* at 7a) and that "the relative economic positions of today's truck and rail industries as well as the ability of motor carriage to compete successfully with other forms of transportation undercuts the basic protective rationale for the 'special circumstances' doctrine" (*id.* at 8a).

The Commission addressed (Pet. App. 10a-11a) this Court's prior decisions in *ATA I* and *ATA II* and concluded that they did not preclude a change in policy (Pet. App. 10a-11a). It explained that the Court had affirmed the agency's practice under the Act and had not construed the statute to require restrictions on operating licenses for rail-affiliated motor carriers. In view of the changes both in the legislation and in the regulated transportation industries, the Commission found that the revised licensing policy was not inconsistent with the decisions of this Court.

4. The court of appeals affirmed the Commission's decision in all respects (Pet. App. 29a-50a). The court held that there was " 'a reasonable basis in law' " (*id.* at 38a (citations omitted)) for the revised policy and that it was "persuaded of the reasonableness of the Commission's position that the new [Interstate Commerce Act], as amended in 1980, permits the abrogation of the special circumstances doctrine in licensing proceedings" (*ibid.*).[4] The court observed that the

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[4]Like the Commission, the court of appeals did not reach the question whether 49 U.S.C. 11344(c) requires the retention of the special circumstances doctrine in acquisition proceedings (Pet. App. 44a & n.4). The Commission has recently issued a policy statement in which it concludes that special circumstances are no longer required to be shown to justify

Interstate Commerce Act, as amended in 1980, "takes a radically different, deregulatory approach in its licensing provisions" (*id.* at 41a-42a) and "unquestionably embod[ies] a strong new deregulatory philosophy" (*id.* at 43a). It also noted that Congress intended the 1980 Acts "to promote 'intermodal' transportation" (*id.* at 46a) and that the Commission's approach would further this purpose. In addition, the court pointed out that the Commission's revised licensing policy "might strenthen the trucking industry by improving its competitive environment as well as strengthen the railroads financially — thus preserving 'the inherent advantage of each mode' " (*id.* at 45a). Finally, the court stated that "Congress has recognized the change in the relative economic positions of the rail and trucking industries" (*ibid.*), and it deferred to the Commission's finding that " 'the relative economic positions of today's truck and rail industries as well as the ability of motor carriage to compete successfully with other forms of transportation undercuts the basic protective rationale of the "special circumstances" doctrine' " (*id.* at 47a-48a).

The court of appeals further held that there was no legal bar to the Commission's revision of its licensing policy in light of the recent statutory amendments and the changed conditions in the rail and trucking industries. After exhaustively reviewing the development of the special circumstances doctrine (Pet. App. 31a-37a), the court concluded that the Commission's modification of its own interpretative practice (which had subjected licensing proceedings to the restrictive standards of the acquisition provisions) did not contravene any requirements imposed by Congress (*id.* at

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a railroad's acquisition of a motor carrier. Ex Parte No. 438, *Acquisitions of Motor Carriers by Railroads*, 49 Fed. Reg. 30376 (1984), petition for review pending, *American Trucking Associations* v. *ICC*, Nos. 84-7545, 84-7546 (9th Cir. filed Aug. 20, 1984). The validity of the acquisitions policy is not at issue in this case.

39a-41a). The court of appeals also analyzed this Court's decisions in *ATA I* and *ATA II* and explained that they (*id.* at 40a (emphasis in original)):

> can most fairly be read as approving the *Commission's* interpretation of its statute * * * and holding the Commission to this interpretation in all cases in the absence of the Commission's overruling of its policy in general. We do not believe the Supreme Court went as far as to state according to its own interpretation of the [Interstate Commerce Act] that the restrictions of acquisitions proceedings also had to be applied in licensing proceedings.

The court of appeals noted that this reading of *ATA I* and *ATA II* was not only most consistent with the issues actually before the Court in those cases (*id.* at 39a) but was also supported by the general principle of administrative law "of according regulatory agencies maximum flexibility" in discharging their authority (*ibid.*).

ARGUMENT

The court of appeals, in a thorough opinion on which we rely, sustained the Commission's revised licensing policy for rail-affiliated motor carriers in light of recent statutory amendments and changed conditions in the rail and trucking industries. That decision is correct and has been followed by the only other court of appeals to consider the issue. See *Tri-State Motor Transit Co.* v. *ICC*, No. 83-2564 (8th Cir. Aug. 3, 1984) (approving revised policy and affirming ICC grant of license), petition for rehearing pending on other grounds (filed Sept. 14, 1984). Accordingly, further review is not warranted.

1. Petitioners contend (Pet. 14-16) that the court of appeals applied an erroneous standard of review in upholding the Commission's position as having " 'a reasonable basis in law' " (Pet. App. 38a (citation omitted)). It is well

settled, however, that a court should defer to an agency's reasonable interpretation of a statute that it is charged with administering. See, *e.g.*, *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, No. 82-1005 (June 25, 1984), slip op. 6-7; *Aluminum Co. of America* v. *Central Lincoln Peoples' Utility Dist.*, No. 82-1071 (June 5, 1984), slip op. 8; *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 450-451 (1978). As the court below correctly recognized, an agency's construction will be accepted if it "has 'a reasonable basis in law' " (*NLRB* v. *Hendricks County Rural Electric Corp.*, 454 U.S. 170, 190 (1981) (citations omitted)) and thus " 'is a reasonable interpretation of the relevant provisions' " (*Aluminum Co.*, slip op. 8 (citation omitted)). This principle is especially apt where, as here, "[t]he subject under regulation is technical and complex" (*ibid.*; *Chevron*, slip op. 26-27), the agency's "choice represents a reasonable accommodation of conflicting policies" (*Chevron*, slip op. 6; see also *id.* at 26-27), and the agency adopted its interpretation shortly after the relevant statute was enacted or amended (*Aluminum Co.*, slip op. 8; *Zenith*, 437 U.S. at 450).

Nor is a different rule applicable when the administrative interpretation under review represents a change in the agency's views.

> The fact that the agency has from time to time changed its interpretation * * * does not * * * [mean] that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.

Chevron, slip op. 25; see also, *e.g.*, *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582, 603 (1981); *National Muffler Dealers Association* v. *United States*, 440 U.S. 472, 485-486

(1979); *NLRB* v. *Weingarten, Inc.*, 420 U.S. 251, 266 (1975); *Commissioner* v. *P.G. Lake, Inc.*, 356 U.S. 260, 266 n.5 (1958). Indeed, as the Court has explained with particular reference to the ICC,

> the Commission, faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice. * * * [T]his kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

American Trucking Associations v. *Atchison, T. & S.F. R.R.*, 387 U.S. 397, 416 (1967).

2. The court below correctly held that the Commission's revision of the licensing policy for rail-affiliated motor carriers is valid under the Interstate Commerce Act and is not inconsistent with the prior decisions of this Court.

a. The Commission's revised policy is consistent with the 1980 amendments to the Interstate Commerce Act enacted by Congress in the Motor Carrier Act and the Staggers Rail Act. As described above (see pages 5-6, *supra*), the 1980 Acts were designed to increase competition in the trucking industry and to promote intermodal operations. As of 1980 the Interstate Commerce Act "takes a radically different, deregulatory approach in its licensing provisions" (Pet. App. 41a-42a) and "unquestionably embod[ies] a strong new deregulatory philosophy" (*id.* at 43a). Mindful of the

obligation to construe the Act " 'as a whole' " (*ATA I*, 355 U.S. at 152 (citation omitted)), both the Commission and the court of appeals considered the recent amendments and concluded that they clearly supported the revised licensing policy.[5]

b. The Commission's revised policy is also supported by changed conditions in the rail and trucking industries (Pet. App. 8a-10a). As the expert administrative agency familiar with these industries and responsible for their regulation, the Commission acted properly in taking such changes into account in interpreting and applying the Act. Moreover, in the 1980 legislation, "Congress has recognized the change in the relative economic positions of the rail and trucking industries" (*id.* at 45a). The Commission was accordingly justified in revising the licensing policy.

Petitioners argue (Pet. 16-17; Pet. Supp. App. 1b-2b), as they did in the court below (Pet. App. 47a), that the Commission misunderstood the economic conditions of the rail and trucking industries and that the revised licensing standard is unsound as a matter of policy. The court of

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[5]Petitioners assert (Pet. 12-14 & n.6, 15-16) that Congress intended to ratify the "special circumstances" doctrine in the 1980 legislation. Such an intent would have been fundamentally at odds with the deregulatory and pro-competitive purposes of the legislation, and the one passage of testimony in congressional hearings cited by petitioners is hardly persuasive evidence of a legislative intent to incorporate and freeze the "special circumstances" doctrine into statutory law. See Pet. App. 41a n.3; see also, *e.g.*, *SEC* v. *Sloan*, 436 U.S. 103, 121 (1978); compare *Bob Jones University* v. *United States*, No. 81-3 (May 24, 1983), slip op. 25 (evidence of Congress's "prolonged and acute awareness of so important an issue"); *Merrill Lynch, Pierce, Fenner & Smith* v. *Curran*, 456 U.S. 353, 382 (1982) (legislative history demonstrated "exactly what Congress intended"). Indeed, that testimony specifically recognized that there were no "statutory restrictions" on licensing as there were on acquisitions but that the ICC had previously applied the acquisitions restrictions "as a matter of policy" in licensing proceedings (Pet. 13 n.6 (emphasis omitted)).

appeals properly deferred to the Commission's — and the Congress's — determination of such issues (*id.* at 48a). Petitioners' arguments are more properly addressed to the legislature and the agency than to the courts. See, *e.g.*, *Chevron*, slip op. 26-28.

c. Finally, petitioners contend (Pet. 9-14) that the Commission's revised policy is inconsistent with the decisions of this Court. Their contention is without merit.

It is clear that the Interstate Commerce Act never contained provisions requiring the Commission's prior "auxiliary operation" and "special circumstances" doctrines in the licensing area. Rather, the Commission adopted those rules as a permissible interpretation in light of the general policies embodied in the statutory sections governing mergers and acquisitions. See pages 3-5, *supra*. In a series of decisions, this Court affirmed the Commission's approach and upheld the agency's rulings; in addition, where the Commission departed without explanation from its announced standard in *ATA II*, the Court reversed the Commission's action.

In our view, both the rationale and the language of these decisions indicate that the Court was sustaining the Commission's interpretation of the Act as permissible rather than adopting it as the single interpretation required by the statute as a matter of law. See, *e.g.*, *ATA II*, 364 U.S. at 6-7 ("this Court has confirmed the correctness of the Commission's conception of its responsibilities"); *ATA I*, 355 U.S. at 148, 149 ("We specifically [have] approved this long administrative practice * * *. [T]he Commission has accepted the policy of the [acquisitions section] as a guiding light [in licensing], not a rigid limitation"); *United States* v. *Rock Island Motor Transit Co.*, 340 U.S. 419, 422, 428, 430-431 (1951); *ICC* v. *Parker*, 326 U.S. at 62-63, 70, 73; see also *American Trucking Associations* v. *Atchison, T. & S.F. R.R.*, 387 U.S at 410. This understanding of the

Court's decisions is also in accord with general principles of administrative law that entrust the construction of a statute to the responsible agency in the first instance (see pages 10-12, *supra*). To be sure, as petitioners point out, certain passages in the Court's opinions can be viewed, when read in isolation, to suggest that the previous licensing standards represented a congressional requirement that the Court was recognizing and enforcing. But "the language of an opinion is not always to be parsed as though we were dealing with the language of a statute." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 341 (1979). We thus agree with the court below (Pet. App. 40a (emphasis in original)) that this "Court's opinions can most fairly be read as approving the *Commission's* interpretation of its statute" and that "the special circumstances doctrine in licensing was not held by the Court to be statutorily required, but rather simply a Court-approved Commission interpretation of its statute." See also *Tri-State Motor Transit Co.*, slip op. 4-7. Accordingly, those decisions do not preclude the Commission from adopting, in light of the recent statutory amendments and the changed conditions in the regulated industries, a revised licensing policy for rail-affiliated motor carriers.[6]

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[6]In any event, even if the revised licensing policy were arguably inconsistent with the Court's decisions construing the pre-1980 Act, that would not invalidate the policy under the Act "as a whole" (*ATA I*, 355 U.S. at 152) in light of the 1980 statutory amendments.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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